

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,

Plaintiff,

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.,

Defendants.

No. 20 Civ. 0233 (JLS)(JJM)

NOTICE OF DOCUMENT SUBPOENA


PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Darlene McDay, as Executrix of the Estate of Dante Taylor, by and through her attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, will cause the attached subpoena to be served upon the following:

New York State Department of Corrections and Community Supervision
Records Access Officer/General Counsel
Harriman State Campus
1220 Washington Avenue Ext., Building 2
Albany, New York 12226-2050

A copy of the subpoena is attached to this notice and is hereby served upon on you.

Dated: January 19, 2023
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: 
Katherine Rosenfeld
Marissa R. Benavides
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff

TO: David J. Sleight
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 852-6274

*Attorney for Defendants Eckert, Stirk, Muratore,
Lambert, Freeman, Collett, Greighton, Theal, Baron,
Olivieri, Dirienzo, Prishel, Stubeusz, Haque, Barall,
Konesky, and Mancini*

Cheryl Meyers Buth
Laurie A. Baker
MEYERS BUTH LAW GROUP PLLC
21 Princeton Place
Orchard Park, NY 14127
(716) 508-8598

Attorney for Defendant Lewalski

Joseph M. LaTona
403 Main Street, Suite 716
Buffalo, NY 14203
(716) 842-0416

Attorneys for Defendant McDonald

Eric M. Soehnlein
Sean M. O'Brien
LIPPES MATHIAS LLP
50 Fountain Plaza, Suite 1700
Buffalo, NY 14202
(716) 853-5100

Attorneys for Defendant White

Daniel J. Henry, Jr.
VILLARINI & HENRY, L.L.P.
16 Main Street
Hamburg, NY 14075
(716) 648-0510

Attorney for Defendant Horbett

Rodney O. Personius
Scott R. Hapeman
Brian M. Melber
PERSONIUS MELBER LLP
2100 Main Place Tower
350 Main Street
Buffalo, NY 14202
716-855-1050

Attorney for Defendant Janis

Barry N. Covert
Diane M. Perri Roberts
Patrick J. Mackey
LIPSITZ GREEN SCIME CAMBRIA LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202
(716) 849-1333

Attorneys for Defendant Maldonado

UNITED STATES DISTRICT COURT

for the

Western District of New York

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,*Plaintiff*

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.*Defendant*

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: New York State Department of Corrections and Community Supervision, Records Access Officer/General Counsel,
Harriman State Campus, 1220 Washington Avenue Ext., Building 2, Albany, NY 12226-2050*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Place: Joseph M. LaTona, Esq.
403 Main Street, Suite 716
Buffalo, New York 14203

Date and Time:

02/09/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Darlene McDay, as Executrix of Estate of Dante Taylor, who issues or requests this subpoena, are:

Katherine Rosenfeld, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 5th Ave., 10th Fl., New York, NY 10020,
krosenfeld@ecbawm.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
 _____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. You: The term “you” means DOCCS and, where appropriate, all officers, directors, employees, partners, subsidiaries, agents or affiliates.
2. Communication: The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
3. Document: The term “document” means, without limitation, the following items which are in the possession, custody or control of DOCCS, its agents, representatives and/or attorneys, whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: agreements, communications, reports, memo book entries, state and federal governmental hearings and reports, correspondence, telegrams, electronic mail, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document and all other writings.
4. Parties: The terms “Plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

5. Person: The term “person” is defined as any natural person or any business, legal or governmental entity, corporation or association.

6. Concerning: The term “concerning” means relating to, referring to, describing, evidencing or constituting.

7. All/Each: The terms “all” and “each” shall be construed as all and each.

8. And/Or: The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.

9. Number: The use of the singular form of any words includes the plural and vice versa.

10. DOCCS: The term “DOCCS” refers to the New York State Department of Corrections and Community Supervision, a department of the New York State government and the direct employer of the Individual Defendants.

DOCUMENTS

1. The complete personnel files and institutional files of CO Kelly McDonald, including the pre-employment psychological screening tests and evaluations.

2. The DOCCS “Employee History” for CO Kelly McDonald.

3. All documents reflecting the filing of disciplinary charges of any kind or disciplinary action taken against CO Kelly McDonald and the disposition of any disciplinary charges or action, from the date of his appointment to the present, including but not limited to Notices of Discipline, Memorandums, and Suspension Notices.

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,

Plaintiff,

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.,

Defendants.

No. 20 Civ. 0233 (JLS)(JJM)

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Records Access Officer/General Counsel
Harriman State Campus
1220 Washington Avenue Ext., Building 2
Albany, New York 12226-2050

A copy of the subpoena is attached to this notice and is hereby served upon on you.

Dated: January 19, 2023
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: 
Katherine Rosenfeld
Marissa R. Benavides
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff

TO: David J. Sleight
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 852-6274

*Attorney for Defendants Eckert, Stirk, Muratore,
Lambert, Freeman, Collett, Greighton, Theal, Baron,
Olivieri, Dirienzo, Prishel, Stubeusz, Haque, Barall,
Konesky, and Mancini*

Cheryl Meyers Buth
Laurie A. Baker
MEYERS BUTH LAW GROUP PLLC
21 Princeton Place
Orchard Park, NY 14127
(716) 508-8598

Attorney for Defendant Lewalski

Joseph M. LaTona
403 Main Street, Suite 716
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Attorneys for Defendant McDonald

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Attorneys for Defendant White

Daniel J. Henry, Jr.
VILLARINI & HENRY, L.L.P.
16 Main Street
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Attorney for Defendant Horbett

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(716) 849-1333

Attorneys for Defendant Maldonado

UNITED STATES DISTRICT COURT

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DARLENE McDAY, as Executrix of the Estate of
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SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
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Harriman State Campus, 1220 Washington Avenue Ext., Building 2, Albany, NY 12226-2050*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Place: Eric M. Soehnlein, Esq., Lippes Mathias LLP
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202

Date and Time:

02/09/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff

Darlene McDay, as Executrix of Estate of Dante Taylor, who issues or requests this subpoena, are:

Katherine Rosenfeld, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 5th Ave., 10th Fl., New York, NY 10020,

krosenfeld@ecbawm.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

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(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

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(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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4. Parties: The terms “Plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

5. Person: The term “person” is defined as any natural person or any business, legal or governmental entity, corporation or association.

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DOCUMENTS

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2. The DOCCS “Employee History” for CO Thomas White.

3. All documents reflecting the filing of disciplinary charges of any kind or disciplinary action taken against CO Thomas White and the disposition of any disciplinary charges or action, from the date of his appointment to the present, including but not limited to Notices of Discipline, Memorandums, and Suspension Notices.

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,

Plaintiff,

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.,

Defendants.

No. 20 Civ. 0233 (JLS)(JJM)

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Albany, New York 12226-2050

A copy of the subpoena is attached to this notice and is hereby served upon on you.

Dated: January 19, 2023
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: 
Katherine Rosenfeld
Marissa R. Benavides
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff

TO: David J. Sleight
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 852-6274

*Attorney for Defendants Eckert, Stirk, Muratore,
Lambert, Freeman, Collett, Greighton, Theal, Baron,
Olivieri, Dirienzo, Prishel, Stubeusz, Haque, Barall,
Konesky, and Mancini*

Cheryl Meyers Buth
Laurie A. Baker
MEYERS BUTH LAW GROUP PLLC
21 Princeton Place
Orchard Park, NY 14127
(716) 508-8598

Attorney for Defendant Lewalski

Joseph M. LaTona
403 Main Street, Suite 716
Buffalo, NY 14203
(716) 842-0416

Attorneys for Defendant McDonald

Eric M. Soehnlein
Sean M. O'Brien
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50 Fountain Plaza, Suite 1700
Buffalo, NY 14202
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Attorneys for Defendant White

Daniel J. Henry, Jr.
VILLARINI & HENRY, L.L.P.
16 Main Street
Hamburg, NY 14075
(716) 648-0510

Attorney for Defendant Horbett

Rodney O. Personius
Scott R. Hapeman
Brian M. Melber
PERSONIUS MELBER LLP
2100 Main Place Tower
350 Main Street
Buffalo, NY 14202
716-855-1050

Attorney for Defendant Janis

Barry N. Covert
Diane M. Perri Roberts
Patrick J. Mackey
LIPSITZ GREEN SCIME CAMBRIA LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202
(716) 849-1333

Attorneys for Defendant Maldonado

UNITED STATES DISTRICT COURT

for the

Western District of New York

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,*Plaintiff*

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.*Defendant*

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: New York State Department of Corrections and Community Supervision, Records Access Officer/General Counsel,
Harriman State Campus, 1220 Washington Avenue Ext., Building 2, Albany, NY 12226-2050*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Place: Scott R. Hapeman, Esq., Personius Melber LLP
2100 Main Place Tower
Buffalo, New York 14202

Date and Time:

02/09/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Darlene McDay, as Executrix of Estate of Dante Taylor, who issues or requests this subpoena, are:

Katherine Rosenfeld, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 5th Ave., 10th Fl., New York, NY 10020,
krosenfeld@ecbawm.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. You: The term “you” means DOCCS and, where appropriate, all officers, directors, employees, partners, subsidiaries, agents or affiliates.
2. Communication: The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
3. Document: The term “document” means, without limitation, the following items which are in the possession, custody or control of DOCCS, its agents, representatives and/or attorneys, whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: agreements, communications, reports, memo book entries, state and federal governmental hearings and reports, correspondence, telegrams, electronic mail, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document and all other writings.
4. Parties: The terms “Plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

5. Person: The term “person” is defined as any natural person or any business, legal or governmental entity, corporation or association.

6. Concerning: The term “concerning” means relating to, referring to, describing, evidencing or constituting.

7. All/Each: The terms “all” and “each” shall be construed as all and each.

8. And/Or: The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.

9. Number: The use of the singular form of any words includes the plural and vice versa.

10. DOCCS: The term “DOCCS” refers to the New York State Department of Corrections and Community Supervision, a department of the New York State government and the direct employer of the Individual Defendants.

DOCUMENTS

1. The complete personnel files and institutional files of CO Dylan Janis, including the pre-employment psychological screening tests and evaluations.

2. The DOCCS “Employee History” for CO Dylan Janis.

3. All documents reflecting the filing of disciplinary charges of any kind or disciplinary action taken against CO Dylan Janis and the disposition of any disciplinary charges or action, from the date of his appointment to the present, including but not limited to Notices of Discipline, Memorandums, and Suspension Notices.

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,

Plaintiff,

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.,

Defendants.

No. 20 Civ. 0233 (JLS)(JJM)

NOTICE OF DOCUMENT SUBPOENA


PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Darlene McDay, as Executrix of the Estate of Dante Taylor, by and through her attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, will cause the attached subpoena to be served upon the following:

New York State Department of Corrections and Community Supervision
Records Access Officer/General Counsel
Harriman State Campus
1220 Washington Avenue Ext., Building 2
Albany, New York 12226-2050

A copy of the subpoena is attached to this notice and is hereby served upon on you.

Dated: January 19, 2023
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: 
Katherine Rosenfeld
Marissa R. Benavides
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff

TO: David J. Sleight
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 852-6274

*Attorney for Defendants Eckert, Stirk, Muratore,
Lambert, Freeman, Collett, Greighton, Theal, Baron,
Olivieri, Dirienzo, Prishel, Stubeusz, Haque, Barall,
Konesky, and Mancini*

Cheryl Meyers Buth
Laurie A. Baker
MEYERS BUTH LAW GROUP PLLC
21 Princeton Place
Orchard Park, NY 14127
(716) 508-8598

Attorney for Defendant Lewalski

Joseph M. LaTona
403 Main Street, Suite 716
Buffalo, NY 14203
(716) 842-0416

Attorneys for Defendant McDonald

Eric M. Soehnlein
Sean M. O'Brien
LIPPES MATHIAS LLP
50 Fountain Plaza, Suite 1700
Buffalo, NY 14202
(716) 853-5100

Attorneys for Defendant White

Daniel J. Henry, Jr.
VILLARINI & HENRY, L.L.P.
16 Main Street
Hamburg, NY 14075
(716) 648-0510

Attorney for Defendant Horbett

Rodney O. Personius
Scott R. Hapeman
Brian M. Melber
PERSONIUS MELBER LLP
2100 Main Place Tower
350 Main Street
Buffalo, NY 14202
716-855-1050

Attorney for Defendant Janis

Barry N. Covert
Diane M. Perri Roberts
Patrick J. Mackey
LIPSITZ GREEN SCIME CAMBRIA LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202
(716) 849-1333

Attorneys for Defendant Maldonado

UNITED STATES DISTRICT COURT

for the

Western District of New York

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,*Plaintiff*

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.*Defendant*

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: New York State Department of Corrections and Community Supervision, Records Access Officer/General Counsel,
Harriman State Campus, 1220 Washington Avenue Ext., Building 2, Albany, NY 12226-2050*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Place: Daniel J. Henry, Jr., Esq.
16 Main Street
Hamburg, New York 14075

Date and Time:

02/09/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff

Darlene McDay, as Executrix of Estate of Dante Taylor, who issues or requests this subpoena, are:

Katherine Rosenfeld, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 5th Ave., 10th Fl., New York, NY 10020,

krosenfeld@ecbawm.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
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(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
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(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. You: The term “you” means DOCCS and, where appropriate, all officers, directors, employees, partners, subsidiaries, agents or affiliates.
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4. Parties: The terms “Plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

5. Person: The term “person” is defined as any natural person or any business, legal or governmental entity, corporation or association.

6. Concerning: The term “concerning” means relating to, referring to, describing, evidencing or constituting.

7. All/Each: The terms “all” and “each” shall be construed as all and each.

8. And/Or: The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.

9. Number: The use of the singular form of any words includes the plural and vice versa.

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DOCUMENTS

1. The complete personnel files and institutional files of CO James Horbett, including the pre-employment psychological screening tests and evaluations.

2. The DOCCS “Employee History” for CO James Horbett.

3. All documents reflecting the filing of disciplinary charges of any kind or disciplinary action taken against CO James Horbett and the disposition of any disciplinary charges or action, from the date of his appointment to the present, including but not limited to Notices of Discipline, Memorandums, and Suspension Notices.

EXHIBIT E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,

Plaintiff,

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.,

Defendants.

No. 20 Civ. 0233 (JLS)(JJM)

NOTICE OF DOCUMENT SUBPOENA

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Darlene McDay, as Executrix of the Estate of Dante Taylor, by and through her attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, will cause the attached subpoena to be served upon the following:


New York State Department of Corrections and Community Supervision
Records Access Officer/General Counsel
Harriman State Campus
1220 Washington Avenue Ext., Building 2
Albany, New York 12226-2050

A copy of the subpoena is attached to this notice and is hereby served upon on you.

Dated: January 19, 2023
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: _____


Katherine Rosenfeld
Marissa R. Benavides
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff

TO: David J. Sleight
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 852-6274

*Attorney for Defendants Eckert, Stirk, Muratore,
Lambert, Freeman, Collett, Greighton, Theal, Baron,
Olivieri, Dirienzo, Prishel, Stubeusz, Haque, Barall,
Konesky, and Mancini*

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21 Princeton Place
Orchard Park, NY 14127
(716) 508-8598

Attorney for Defendant Lewalski

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403 Main Street, Suite 716
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(716) 842-0416

Attorneys for Defendant McDonald

Eric M. Soehnlein
Sean M. O'Brien
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(716) 853-5100

Attorneys for Defendant White

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VILLARINI & HENRY, L.L.P.
16 Main Street
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Attorney for Defendant Horbett

Rodney O. Personius
Scott R. Hapeman
Brian M. Melber
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2100 Main Place Tower
350 Main Street
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716-855-1050

Attorney for Defendant Janis

Barry N. Covert
Diane M. Perri Roberts
Patrick J. Mackey
LIPSITZ GREEN SCIME CAMBRIA LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202
(716) 849-1333

Attorneys for Defendant Maldonado

UNITED STATES DISTRICT COURT

for the

Western District of New York

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,*Plaintiff*

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.*Defendant*

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: New York State Department of Corrections and Community Supervision, Records Access Officer/General Counsel,
Harriman State Campus, 1220 Washington Avenue Ext., Building 2, Albany, NY 12226-2050*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Place: Cheryl Meyers Buth, Esq., Meyers Buth Law Group PLLC
21 Princeton Place, Suite 105
Orchard Park, New York, NY 14127

Date and Time:

02/09/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff

Darlene McDay, as Executrix of Estate of Dante Taylor, who issues or requests this subpoena, are:

Katherine Rosenfeld, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 5th Ave., 10th Fl., New York, NY 10020,

krosenfeld@ecbawm.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. You: The term “you” means DOCCS and, where appropriate, all officers, directors, employees, partners, subsidiaries, agents or affiliates.
2. Communication: The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
3. Document: The term “document” means, without limitation, the following items which are in the possession, custody or control of DOCCS, its agents, representatives and/or attorneys, whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: agreements, communications, reports, memo book entries, state and federal governmental hearings and reports, correspondence, telegrams, electronic mail, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document and all other writings.
4. Parties: The terms “Plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

5. Person: The term “person” is defined as any natural person or any business, legal or governmental entity, corporation or association.

6. Concerning: The term “concerning” means relating to, referring to, describing, evidencing or constituting.

7. All/Each: The terms “all” and “each” shall be construed as all and each.

8. And/Or: The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.

9. Number: The use of the singular form of any words includes the plural and vice versa.

10. DOCCS: The term “DOCCS” refers to the New York State Department of Corrections and Community Supervision, a department of the New York State government and the direct employer of the Individual Defendants.

DOCUMENTS

1. The complete personnel files and institutional files of Sergeant Timothy Lewalski, including the pre-employment psychological screening tests and evaluations.

2. The DOCCS “Employee History” for Sergeant Lewalski.

3. All documents reflecting the filing of disciplinary charges of any kind or disciplinary action taken against Sergeant Lewalski and the disposition of any disciplinary charges or action, from the date of his appointment to the present, including but not limited to Notices of Discipline, Memorandums, and Suspension Notices.

EXHIBIT F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,

Plaintiff,

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.,

Defendants.

No. 20 Civ. 0233 (JLS)(JJM)

NOTICE OF DOCUMENT SUBPOENA


PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Darlene McDay, as Executrix of the Estate of Dante Taylor, by and through her attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, will cause the attached subpoena to be served upon the following:

New York State Department of Corrections and Community Supervision
Records Access Officer/General Counsel
Harriman State Campus
1220 Washington Avenue Ext., Building 2
Albany, New York 12226-2050

A copy of the subpoena is attached to this notice and is hereby served upon on you.

Dated: January 19, 2023
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: 
Katherine Rosenfeld
Marissa R. Benavides
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff

TO: David J. Sleight
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 852-6274

*Attorney for Defendants Eckert, Stirk, Muratore,
Lambert, Freeman, Collett, Greighton, Theal, Baron,
Olivieri, Dirienzo, Prishel, Stubeusz, Haque, Barall,
Konesky, and Mancini*

Cheryl Meyers Buth
Laurie A. Baker
MEYERS BUTH LAW GROUP PLLC
21 Princeton Place
Orchard Park, NY 14127
(716) 508-8598

Attorney for Defendant Lewalski

Joseph M. LaTona
403 Main Street, Suite 716
Buffalo, NY 14203
(716) 842-0416

Attorneys for Defendant McDonald

Eric M. Soehnlein
Sean M. O'Brien
LIPPES MATHIAS LLP
50 Fountain Plaza, Suite 1700
Buffalo, NY 14202
(716) 853-5100

Attorneys for Defendant White

Daniel J. Henry, Jr.
VILLARINI & HENRY, L.L.P.
16 Main Street
Hamburg, NY 14075
(716) 648-0510

Attorney for Defendant Horbett

Rodney O. Personius
Scott R. Hapeman
Brian M. Melber
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716-855-1050

Attorney for Defendant Janis

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Diane M. Perri Roberts
Patrick J. Mackey
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42 Delaware Avenue, Suite 120
Buffalo, NY 14202
(716) 849-1333

Attorneys for Defendant Maldonado

UNITED STATES DISTRICT COURT

for the

Western District of New York

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,*Plaintiff*

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.*Defendant*

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: New York State Department of Corrections and Community Supervision, Records Access Officer/General Counsel,
Harriman State Campus, 1220 Washington Avenue Ext., Building 2, Albany, NY 12226-2050*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Place: Diane Perri Robert, Esq.,
Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 120, Buffalo, NY 14202

Date and Time:

02/09/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Darlene McDay, as Executrix of Estate of Dante Taylor, who issues or requests this subpoena, are:

Katherine Rosenfeld, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 5th Ave., 10th Fl., New York, NY 10020,
krosenfeld@ecbawm.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. You: The term “you” means DOCCS and, where appropriate, all officers, directors, employees, partners, subsidiaries, agents or affiliates.
2. Communication: The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
3. Document: The term “document” means, without limitation, the following items which are in the possession, custody or control of DOCCS, its agents, representatives and/or attorneys, whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: agreements, communications, reports, memo book entries, state and federal governmental hearings and reports, correspondence, telegrams, electronic mail, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document and all other writings.
4. Parties: The terms “Plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

5. Person: The term “person” is defined as any natural person or any business, legal or governmental entity, corporation or association.

6. Concerning: The term “concerning” means relating to, referring to, describing, evidencing or constituting.

7. All/Each: The terms “all” and “each” shall be construed as all and each.

8. And/Or: The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.

9. Number: The use of the singular form of any words includes the plural and vice versa.

10. DOCCS: The term “DOCCS” refers to the New York State Department of Corrections and Community Supervision, a department of the New York State government and the direct employer of the Individual Defendants.

DOCUMENTS

1. The complete personnel files and institutional files of CO Melvin Maldonado, including the pre-employment psychological screening tests and evaluations.

2. The DOCCS “Employee History” for CO Melvin Maldonado.

3. All documents reflecting the filing of disciplinary charges of any kind or disciplinary action taken against CO Melvin Maldonado and the disposition of any disciplinary charges or action, from the date of his appointment to the present, including but not limited to Notices of Discipline, Memorandums, and Suspension Notices.

EXHIBIT G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,

Plaintiff,

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.,

Defendants.

No. 20 Civ. 0233 (JLS)(JJM)

NOTICE OF DOCUMENT SUBPOENA


PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Darlene McDay, as Executrix of the Estate of Dante Taylor, by and through her attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, will cause the attached subpoena to be served upon the following:

New York State Department of Corrections and Community Supervision
Records Access Officer/General Counsel
Harriman State Campus
1220 Washington Avenue Ext., Building 2
Albany, New York 12226-2050

A copy of the subpoena is attached to this notice and is hereby served upon on you.

Dated: January 19, 2023
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: 
Katherine Rosenfeld
Marissa R. Benavides
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff

TO: David J. Sleight
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 852-6274

*Attorney for Defendants Eckert, Stirk, Muratore,
Lambert, Freeman, Collett, Greighton, Theal, Baron,
Olivieri, Dirienzo, Prishel, Stubeusz, Haque, Barall,
Konesky, and Mancini*

Cheryl Meyers Buth
Laurie A. Baker
MEYERS BUTH LAW GROUP PLLC
21 Princeton Place
Orchard Park, NY 14127
(716) 508-8598

Attorney for Defendant Lewalski

Joseph M. LaTona
403 Main Street, Suite 716
Buffalo, NY 14203
(716) 842-0416

Attorneys for Defendant McDonald

Eric M. Soehnlein
Sean M. O'Brien
LIPPES MATHIAS LLP
50 Fountain Plaza, Suite 1700
Buffalo, NY 14202
(716) 853-5100

Attorneys for Defendant White

Daniel J. Henry, Jr.
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UNITED STATES DISTRICT COURT

for the

Western District of New York

DARLENE McDAY, as Executrix of the Estate of
DANTE TAYLOR,*Plaintiff*

v.

STEWART ECKERT, Superintendent, Wende
Correctional Facility, et al.*Defendant*

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: New York State Department of Corrections and Community Supervision, Records Access Officer/General Counsel,
Harriman State Campus, 1220 Washington Avenue Ext., Building 2, Albany, NY 12226-2050*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Place: Emery Celli Brinckerhoff Abady Ward & Maazel LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020

Date and Time:

02/09/2023 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Darlene McDay, as Executrix of Estate of Dante Taylor, who issues or requests this subpoena, are:

Katherine Rosenfeld, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, 600 5th Ave., 10th Fl., New York, NY 10020,
krosenfeld@ecbawm.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20 Civ. 0233 (JLS)(JJM)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. Defendants: The term “Defendants” means the following defendants in the above-captioned action who are or were employed by DOCCS at Wende Correctional Facility on October 6, 2017 and who are named in the case caption: Sergeant Timothy Lewalski, Officer Kelly McDonald, Officer Thomas White, Officer James Horbett, Officer Dylan Janis, and Officer Melvin Maldonado.
2. Scott Lambert: The term Scott Lambert refers to Sergeant Scott Lambert who was employed at Wende Correctional Facility on October 6, 2017.
3. Dwight Wyatt: The term Dwight Wyatt refers to Officer Dwight Wyatt who was employed at Wende Correctional Facility on October 6, 2017.
4. You: The term “you” means DOCCS and, where appropriate, all officers, directors, employees, partners, subsidiaries, agents or affiliates.
5. Communication: The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
6. Document: The term “document” means, without limitation, the following items which are in the possession, custody or control of DOCCS, its agents, representatives and/or attorneys, whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand: agreements, communications, reports, memo book entries, state and federal governmental hearings and reports, correspondence, telegrams, electronic mail, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or

reports of consultants, photographs, motion picture films, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document and all other writings.

7. Parties: The terms “Plaintiff” and “Defendants” as well as a party’s full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

8. Person: The term “person” is defined as any natural person or any business, legal or governmental entity, corporation or association.

9. Concerning: The term “concerning” means relating to, referring to, describing, evidencing or constituting.

10. All/Each: The terms “all” and “each” shall be construed as all and each.

11. And/Or: The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.

12. Number: The use of the singular form of any words includes the plural and vice versa.

13. DOCCS: The term “DOCCS” refers to the New York State Department of Corrections and Community Supervision, a department of the New York State government and the direct employer of the Individual Defendants.

14. OSI: The term “OSI” means of the Office of Special Investigations of the New York State Department of Corrections and Community Supervision.

DOCUMENTS

1. All documents concerning the use of force incidents and unusual incidents, including, without limitation, use of force and/or unusual incident packages, where one or more of the Defendants, Scott Lambert, or Dwight Wyatt either (a) prepared, either as participants or witnesses, the document(s) or (b) were identified as having been present or involved.

Responsive documents shall include incidents that occurred from the beginning of the Defendants', Dwight Wyatt's and Scott Lambert's employment with DOCCS to the present.

2. All OSI Investigative Reports relating to any allegations of misconduct by the Defendants, Dwight Wyatt, or Scott Lambert.

3. All Grievances, complaints, or letters of complaint filed or otherwise submitted by incarcerated individuals at Wende Correctional Facility alleging any misconduct of any type by Defendants, Dwight Wyatt, or Scott Lambert.

4. All documents relating to any allegations of misconduct involving the Defendants, Dwight Wyatt, or Scott Lambert, including but not limited to documents sufficient to show whether the allegations were investigated, whether disciplinary or other charges were brought against any individual following the investigation, and the disposition of such charges.

5. The complete OSI Investigative files for the cases listed in the table below, including but not limited to all OSI Investigative Reports.

Officer	Charge or IAD or other Identifying Number	Charge Name	Date Closed
Timothy Lewalski	SCU/05/0081	Misconduct SCU: Sexual Misconduct	06/04/2007
Timothy Lewalski	None (identified as "Complaint")	Harassment	04/19/2005
Timothy Lewalski	SCU/10/0299	Sexual Misconduct, SCU: Sexual Misconduct	03/28/2011

Timothy Lewalski	SCU/10/0218	Sexual Harassment, SCU: Sexual Harassment	01/28/2011
Timothy Lewalski	SCU/10/0209	Sexual Misconduct, SCU: Sexual Misconduct	01/10/2011
Timothy Lewalski	IAD/07/1250	Assault, IAD: Excessive Force/Assault	03/18/2008
Timothy Lewalski	IAD/05/0786	Assault, IAD: Excessive Force/Assault	09/12/2006
Timothy Lewalski	IAD/04/1068	Assault, IAD: Excessive Force/Assault	08/10/2006
Timothy Lewalski	IAD/03/1079	Assault, IAD: Excessive Force/Assault	03/03/2004
Timothy Lewalski	IAD/03/0172	Assault, IAD: Excessive Force/Assault	09/19/2003
Timothy Lewalski	IAD/17/0166	Assault, IAD: Excessive Force/Assault	09/12/2017
Timothy Lewalski	Complaint – 190853	Sexual Harassment	12/02/2016
Timothy Lewalski	Complaint – 189125	Property	12/02/2016
Timothy Lewalski	IAD/16/1175	Assault, IAD: Excessive Force/Assault	07/12/2017
Timothy Lewalski	IAD/16/0141	Death, IAD: Inmate Death – Natural Causes	05/18/2017
Timothy Lewalski	Complaint – 174031	Staff/Inm Sexual Abuse (Assault)	08/06/20
Timothy Lewalski	IAD/15/0957	Assault, IAD: Excessive Force/Assault	10/18/2016
Timothy Lewalski	Complaint – 171381	Assault, Misconduct	05/23/2015
Timothy Lewalski	SCU/15/0169	Fears for Safety, Sexual Harassment, SCU: Other	08/21/2016
Timothy Lewalski	SCU/15/0159	Sexual Misconduct, Unauthorized Relationships, SCU: Employee Misconduct	Open 10/10/2017
Timothy Lewalski	IAD/15/0401	Conditions, Assault, IAD: Excessive Force/Assault	11/12/2015
Timothy Lewalski	IAD/15/0099	Assault, IAD: Excessive Force/Assault	03/10/2016
Timothy Lewalski	IAD/14/1773	Contraband, IAD: Contraband – Electronic Device	04/15/2015

Timothy Lewalski	IAD/14/1692	Assault, IAD/Excessive Force/Assault	12/17/2014
Timothy Lewalski	IAD/14/1007	Assault, IAD/Excessive Force/Assault	02/12/2015
Timothy Lewalski	IAD/13/1562	Assault, Fears for Safety, Threats, Transfer, IAD: Excessive Force/Assault	12/30/2013
Timothy Lewalski	IAD/13/1697	Assault, Contraband, ID: Excessive Force/Assault	02/10/2014
Timothy Lewalski	IAD/02/0550	Assault, IAD: Excessive Force/Assault	09/23/2002
Timothy Lewalski	SCU/13/0055	Staff/Inm Sexual Abuse (Assault), SCU: Staff/Inmate Sexual Assaults	08/26/2013
Timothy Lewalski	IAD/13/0227	Assault, IAD: Excessive Force/Assault	08/20/2013
Timothy Lewalski	IAD/12/1330	Contraband, IAD: Contraband – other	06/25/2013
Timothy Lewalski	IAD/12/0763	Assault, IAD: Excessive Force/Assault	08/28/2012
Timothy Lewalski	IAD/11/0731	Assault, IAD: Excessive Force/Assault	12/23/2015
Timothy Lewalski	IAD/10/1514	Assault, IAD: Excessive Force/Assault	02/25/2011
Timothy Lewalski	IAD/09/1157	Assault, IAD: Excessive Force/Assault	10/06/2009
Timothy Lewalski	IAD/09/0868	Misconduct, IAD: Employee Misconduct	03/24/2010
Timothy Lewalski	None (identified as “Complaint”)	Property	03/31/2003
Timothy Lewalski	IAD/05/0803	Assault, IAD: Excessive Force/Assault	11/18/2005
Timothy Lewalski	IAD/17/1596	Assault, IAD: Excessive Force/Assault	Open 11/20/2017
James Horbett	None (identified as “Complaint”)	Harassment	07/01/2004
James Horbett	None (identified as “Complaint”)	Threats	09/22/2003
James Horbett	None (identified as “Complaint”)	Threats	08/04/2003
James Horbett	IAD/16/1895	Aggravated Harassment, IAD: Employee Misconduct	Open 09/27/2017

James Horbett	SCU/16/0154	Staff/Inm Sexual Abuse (Assault), SCU: Staff/Inmate Sexual Assaults	11/22/2016
James Horbett	Complaint – 175848	Frisk	10/07/2015
James Horbett	SCU/15/0168	Sexual Assault, SCU: Sexual Misconduct	06/09/2017
James Horbett	IAD/15/0175	Harassment, IAD: Harassment	04/11/2016
James Horbett	IAD/14/1875	Death, IAD: Inmate Death – Suicide	07/31/2015
James Horbett	IAD/14/1108	Assault, IAD: Excessive Force/Assault	06/17/2015
James Horbett	Complaint – 161525	Assault, Misconduct, Property	08/02/2014
James Horbett	IAD/14/1007	Assault, IAD: Excessive Force/Assault	02/12/2015
James Horbett	IAD/13/1346	Assault, IAD: Excessive Force/Assault	11/21/2013
James Horbett	IAD/13/0780	Assault, IAD: Excessive Force/Assault	01/21/2014
James Horbett	SCU/12/0280	Assault, SCU: Staff/Inmate Sexual Assaults	06/21/2013
James Horbett	IAD/10/1039	Assault, IAD: Excessive Force/Assault	12/27/2010
James Horbett	IAD/08/1779	Assault, IAD: Excessive Force/Assault	06/23/2009
James Horbett	IAD/04/1056	Assault, IAD: Excessive Force/Assault	01/10/2005
James Horbett	IAD/03/0507	Assault, IAD: Excessive Force/Assault	08/21/2003
Scott Lambert	None (identified as “Complaint”)	Disciplinary	08/22/2003
Scott Lambert	None (identified as “Complaint”)	Threats	02/13/2003
Scott Lambert	None (identified as “Complaint”)	Threats	02/27/2003
Scott Lambert	IAD/99/0556	Death	06/14/1999
Scott Lambert	SCU/10/0005	Harassment, SCU: Miscellaneous Allegations	05/20/2014
Scott Lambert	IAD/08/0060	Misconduct, IAD: Employee Misconduct	06/02/2008
Scott Lambert	SCU/06/0130	Misconduct, SCU: Sexual Misconduct	09/14/2006

Scott Lambert	SCU/06/0181	Sexual Harassment, SCU: Sexual Misconduct	09/14/2006
Scott Lambert	IAD/06/0879	Property, IAD: Property Theft/Damage/ Inmate Property	02/23/2007
Scott Lambert	IAD/06/0606	Assault, IAD: Excessive Force/Assault	11/16/2006
Scott Lambert	IAD/05/1115	Assault, IAD Excessive Force/Assault	12/22/2005
Scott Lambert	IAD/05/0568	Assault, IAD Excessive Force/Assault	12/05/2005
Scott Lambert	IAD/04/1252	Sexual Misconduct, IAD: Other	03/21/2005
Scott Lambert	IAD/04/1162	Assault, IAD Excessive Force/Assault	10/21/2005
Scott Lambert	IAD/03/0241	Assault, IAD Excessive Force/Assault	09/19/2003
Scott Lambert	Complaint – 184791	Sexual Misconduct, Frisk	06/08/2016
Scott Lambert	None (identified as “Complaint”)	Harassment	02/23/2005
Scott Lambert	None (identified as “Complaint”)	Disciplinary	11/01/2006
Scott Lambert	SCU/13/0055	Staff/Inm Sexual Abuse (Assault), SCU: Staff/Inmate Sexual Assaults	08/26/2013
Scott Lambert	None (identified as “Complaint”)	Threats	02/27/2003
Scott Lambert	None (identified as “Complaint”)	Disciplinary	05/02/2006
Scott Lambert	SCU/06/0130	Misconduct, SCU: Sexual Misconduct	09/14/2006
Scott Lambert	SCU/06/0181	Sexual Harassment, SCU: Sexual Misconduct	09/14/2006
Scott Lambert	IAD/06/0879	Property, IAD: Property Theft/Damage/ Inmate Property	02/23/2007
Scott Lambert	IAD/06/0606	Assault, IAD: Excessive Force/Assault	11/16/2006
Scott Lambert	IAD/08/0060	Misconduct, IAD: Employee Misconduct	06/02/2008
Scott Lambert	IAD/05/1115	Assault, IAD: Excessive Force/Assault	12/22/2005
Scott Lambert	IAD/05/0568	Assault, IAD: Excessive Force/Assault	12/05/2005
Scott Lambert	IAD/04/1252	Sexual Misconduct, IAD: Other	03/21/2005

Scott Lambert	IAD/04/1162	Assault, IAD: Excessive Force/Assault	10/21/2005
Scott Lambert	IAD/03/0241	Assault, IAD: Excessive Force/Assault	09/19/2003
Scott Lambert	IAD/99/0556	Death	06/14/1999
Scott Lambert	None (identified as "Complaint")	Harassment	02/23/2005
Melvin Maldonado	None (identified as "Complaint")	Harassment	10/05/1010
Melvin Maldonado	None (identified as "Complaint")	Frisk	04/29/2009
Melvin Maldonado	IAD/09/0657	Assault, IAD: Excessive Force/Assault	10/06/2009
Melvin Maldonado	IAD/15/0338	Assault, IAD: Excessive Force/Assault	09/21/2015
Melvin Maldonado	Complaint – 148048	Harassment	04/22/2013
Melvin Maldonado	IAD/10/0468	Assault, IAD: Excessive Force/Assault	08/20/2010
Melvin Maldonado	IAD/10/0372	Assault, IAD: Excessive Force/Assault	07/28/2010
Melvin Maldonado	IAD/09/0949	Assault, IAD: Excessive Force/Assault	07/13/2009